

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID G. MAGRAW,

Petitioner,

v.

GARY RODEN,

Respondent.

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) **Civil Action No.**
) **09-11534-FDS**
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ORDER ON CERTIFICATE OF APPEALABILITY

SAYLOR, J.

On March 22, 2013, this Court issued an order dismissing the petition for a writ of habeas corpus.

To appeal the final order in a proceeding instituted under 28 U.S.C. § 2255, the petitioner must first obtain a Certificate of Appealability (“COA”) from a circuit justice or a district court. *See* 28 U.S.C. § 2253(c). A COA will issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). This standard is satisfied by “demonstrating that jurists of reason could disagree with the district court’s resolution of [petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Petitioner asserted four claims in support of his petition for relief: (1) that the evidence was insufficient to support his conviction in violation of the Due Process Clause of the

Fourteenth Amendment; (2) that the prosecution made statements and elicited testimony during the trial about certain incidents, including the first trial, that deprived petitioner of his constitutional right to a fair trial under the Sixth and Fourteenth Amendments; (3) that the trial court's admission of certain hearsay statements violated his rights under the Confrontation Clause of the Sixth Amendment; and (4) that the Commonwealth destroyed certain medical evidence in violation of the Due Process Clause of the Fourteenth Amendment.

The matter was referred to United States Magistrate Judge Robert B. Collings pursuant to 28 U.S.C. § 636(b)(1), who recommended that the petition be denied. Petitioner timely filed an objection to the Report and Recommendation of the Magistrate Judge, challenging his findings as to all of petitioner's claims except the alleged Confrontation Clause violation. Upon *de novo* review, this Court adopted the Report and Recommendation of the Magistrate Judge.

Petitioner's contentions present colorable claims of a substantial showing of the denial of his constitutional rights to due process and a fair trial, and it further appears that a reasonable jurist could disagree with the Court's conclusions.

Accordingly, a Certificate of Appealability is GRANTED as to petitioner's claims that the evidence was insufficient to support his conviction; that the prosecution made statements and elicited testimony during the trial that unconstitutionally prejudiced petitioner; and that the Commonwealth unconstitutionally withheld certain medical evidence.

So Ordered.

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
United States District Judge

Dated: April 18, 2013